

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

IN RE: MURPHY, Gerald B.)	
)	APPEAL NO. _____
SERIAL NO: 09/777,761)	
)	
FOR: METHOD FOR STRATEGIC)	
COMMODITY MANAGEMENT)	
THROUGH MASS CUSTOMIZATION)	
)	
)	REPLY BRIEF ON APPEAL
FILED: February 6, 2001)	
)	
GROUP ART UNIT: 3626)	
)	
CONFIRMATION NO: 4274)	
)	

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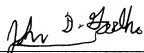
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4.	Neither Hay et al. nor Remley et al. nor O'Brien disclose "calculating a level of crop revenue insurance to assure a predetermined level of income from sale of pre-determined quantities of crops for use in meeting the financial obligations, such that the financing is underwritten by pre-selling and the pre-selling is underwritten by the level of crop revenue insurance."	5
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I. STATUS OF CLAIMS

Claims 15 and 17-29 stand pending and rejected. Claims 1-14 and 16 have been cancelled. The rejections to claims 15 and 17-29 are appealed.

II. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether claim 15 is unpatentable under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Publication No. 2002/0059091A1 to Hay et al. in view of U.S. Patent Publication No. 2002/0023052A1 to Remley et al. and further in view of O'Brien ("Grain Marketing Plans for Farmers").

B. Whether claim 29 is unpatentable under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Publication No. 2002/0059091A1 to Hay et al. in view of U.S. Patent Publication No. 2002/0023052A1 to Remley et al. and further in view of O'Brien ("Grain Marketing Plans for Farmers").

C. Whether claims 17 and 23 are unpatentable under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Publication No. 2002/0059091A1 to Hay et al. in view of O'Brien ("Grain Marketing Plans for Farmers").

D. Whether claims 18 and 19 are unpatentable under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Publication No. 2002/0059091A1 to Hay et al. in view of U.S.

Patent Publication No. 2002/0023052A1 to Remley et al. and further in view of O'Brien ("Grain Marketing Plans for Farmers").

E. Whether claims 20, 21, and 22 are unpatentable under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Publication No. 2002/0059091A1 to Hay et al. in view O'Brien ("Grain Marketing Plans for Farmers") and further in view of Friedman ("Dictionary of Business Terms").

F. Whether claims 24-28 are unpatentable under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Publication No. 2002/0059091A1 to Hay et al. in view O'Brien ("Grain Marketing Plans for Farmers") and further in view of U.S. Patent No. 6,990,459 to Schneider.

III. INTRODUCTION

The present inventor's contribution is a systematic method for an income-based approach to strategic marketing action plans that lenders rely upon when making financing decisions. As such, the systematic method quantifies different aspects of the agricultural production operation by objectively assigning scores in order to create an appropriate plan.

The Examiner fails to take into account the invention as a whole—a systematic income approach to selling a crop which assures income (and thus, the availability of funds to payoff debt obligations) while allowing for capturing additional income. The claimed

invention allows for banks to reduce speculation in loaning to agricultural enterprises, while not adversely affecting the producer by unduly limiting income.

In constructing the rejections presented, the Examiner improperly ignores the invention as a whole, and in particular, its systematic methodology. Moreover, the Examiner ignores particular claim limitations to eviscerate the claimed invention. The Examiner should be reversed.

IV. ARGUMENT

A. Claim 15 is nonobvious with respect to U.S. Patent Publication No. 2002/0059091A1 to Hay et al. in view of U.S. Patent Publication No. 2002/0023052A1 to Remley et al. and further in view of O'Brien ("Grain Marketing Plans for Farmers").

1. Neither Hay, nor Remley et al. nor O'Brien, alone or in combination teach "determining a financial assessment score based on the financial assessment."

The Examiner misconstrues the term "financial assessment." As stated in the specification, "The financial assessment is used to determine financial ratios; profitability of the business as a whole; producer capability; repayment capacity; and enterprise analysis of which product mix offers the most profit." (Specification, p. 18, lines 14-18).

The Examiner's position is that because a financial assessment could include looking at a farmer credit history, that "determining a financial assessment score based on the financial assessment" is met by looking at a farmer credit history. However, merely looking at a farmer credit history is insufficient to perform a financial assessment as it is insufficient to determine financial ratios, profitability of the business as a whole, producer capability,

repayment capacity, and an enterprise analysis. As such, Hay's teaching of looking at a farmer credit history does not teach performing a financial assessment. It is further submitted that although a lender may be interested in the farmer credit history, that here, the financial assessment is a part of the process of creating a marketing plan for the producer and merely looking at a farmer credit history would not provide sufficient information for the requisite financial assessment.

The Examiner's position that a farmer credit history is a financial assessment because a financial assessment could include a farmer credit history (Examiner's Answer, p. 19) is illogical. It is like saying a cup holder is a tractor because a tractor could include a cup holder.

In any event, Hay does not disclose "determining a financial assessment score based on the financial assessment." Hay discloses a financial rating, but does not specify that such a rating is numeric or otherwise a score.

2. Neither Hay, nor Remley et al. nor O'Brien, alone or in combination teach "calculating a marketing financial risk score wherein the marketing financial risk score is defined as a numeric value describing financial risks related to markets and income of each agricultural enterprise associated with the agricultural business."

The Examiner cites to paragraphs 51, 52, and 65 of Hay. There is no disclosure of calculating a marketing financial risk score. Discussion of markets, risks, and prices, simply does not meet the claimed language. The claim language itself defines what a marketing financial risk score is, and Hay does not disclose a marketing financial risk score.

3. Neither Hay, nor Remley et al. nor O'Brien, alone or in combination teach "determining pre-sell quantities using the financial assessment score, the marketing financial risk score and a price risk associated with a commodity market."

It is the Examiner's apparent position that this limitation is met simply by identifying a farm's capability to grow a predefined quantity of the crop of interest and the quantity of the crop of interest the agricultural entity would like to sell and thus, it is readily apparent that Hay teaches determining pre-sell quantities. Noticeably absent, is any discussion by the Examiner regarding the use of a financial assessment score, a marketing financial risk score, and a price risk in determining pre-sell quantities. Such disclosure is not a part of Hay, nor Remley et al. nor O'Brien et al. As such, these rejections must be withdrawn.

4. Neither Hay et al. nor Remley et al. nor O'Brien disclose "calculating a level of crop revenue insurance to assure a predetermined level of income from sale of pre-determined quantities of crops for use in meeting the financial obligations, such that the financing is underwritten by pre-selling and the pre-selling is underwritten by the level of crop revenue insurance."

It is the Examiner's apparent position that O'Brien discloses the use of crop insurance and the purpose of the insurance is to protect the proportion of expected production or expected crop revenue, and as such, O'Brien teaches that the pre-selling is underwritten by the level of crop insurance. The language of the claim, however, is "calculating a level of crop revenue insurance to assure a predetermined level of income from sale of pre-determined quantities of crops..." Thus, the claim makes clear that the predetermined level

of income is made prior to calculating a level of crop revenue insurance. The Examiner appears to simply ignore the claim language. Therefore, the Examiner should be reversed.

5. Neither Hay et al. nor Remley et al. nor O'Brien disclose "electronically providing marketing information to the agricultural producers in order to update the written agricultural marketing plans...wherein the updated marketing information comprises probabilities of price targets"

The Examiner points to paragraph 005 and FIG. 4 of Remley as disclosing "probabilities of price targets." Neither paragraph 005 or FIG. 4 of Remley disclose probabilities of price targets. Price targets are mentioned. However, in Remley there is simply no mention of the probability of reaching a particular price target. The Examiner alleges that the Applicant has failed to specifically point out how the language of the claims patentably distinguishes them from the applied references. Here, the claim requires "electronically providing marketing information to the agricultural producers in order to update the written agricultural marketing plans...wherein the updated marketing information comprises probabilities of price targets." The Examiner relies upon Remley as disclosing probabilities of price targets. Remley simply does not. Remley provides a producer with a guaranteed level of revenue, thus would not generally be concerned with changing markets let alone the probabilities of achieving different price targets and updating an agricultural marketing plan with such information. In any event, Remley does not disclose updating a written agricultural marketing plan with probabilities of price targets. Therefore, the Examiner should be reversed.

- B. Claim 29 is nonobvious with respect to U.S. Patent Publication No. 2002/0059091A1 to Hay et al. in view of U.S. Patent Publication No. 2002/0023052A1 to Remley et al. and further in view of O'Brien ("Grain Marketing Plans for Farmers").**

1. Neither Hay et al. nor Remley et al. nor O'Brien, alone or in combination disclose "determining a marketing financial risk score for each agricultural enterprise of the business, the marketing financial risk score associated with financial risks related to markets and income of each of the agricultural enterprises."

The Examiner cites to paragraphs 51, 52, and 65 of Hay as disclosing this limitation.

There is no disclosure of calculating a marketing financial risk score. Discussion of markets, risks, and prices, simply does not meet the claimed language. Hay does not quantify financial risks related to markets and income into a marketing financial risk score. Therefore, the Examiner should be reversed.

2. Neither Hay et al. nor Remley et al. nor O'Brien alone or in combination disclose "calculating a level of crop revenue insurance for each of the agricultural enterprises to protect revenue generated from pre-selling, thereby underwriting the pre-selling with the crop revenue insurance and underwriting the assured income with the pre-selling."

It is the Examiner's apparent position that O'Brien discloses the use of crop insurance and the purpose of the insurance is to protect the proportion of expected production or expected crop revenue, and as such, O'Brien teaches that the pre-selling is underwritten by the level of crop insurance. The language of the claim, however, is "calculating a level of crop revenue insurance for each of the agricultural enterprises to protect revenue generated from pre-selling." Thus, the claim makes clear that the revenue generated from pre-selling is

known prior to the level of crop revenue insurance being calculated. The Examiner appears to simply ignore the claim language. Therefore, the Examiner should be reversed.

C. Claims 17 and 23 are nonobvious over U.S. Patent Publication No. 2002/0059091A1 to Hay et al. in view of O'Brien ("Grain Marketing Plans for Farmers").

The language of claim 17 (from which claim 23 depends) recites "calculating a level of crop revenue insurance to assure at least a predetermined level of income from sale of predetermined pre-sell quantities of crops. " Thus, the claim makes clear that the income generated from pre-selling is known prior to the level of crop revenue insurance being calculated. The Examiner appears to simply ignore the claim language. Therefore, the Examiner should be reversed.

D. Claims 18 and 19 are nonobvious over U.S. Patent Publication No. 2002/0059091A1 to Hay et al. in view of U.S. Patent Publication No. 2002/0023052A1 to Remley et al. and further in view of O'Brien ("Grain Marketing Plans for Farmers").

As a whole, O'Brien's approach is based on a producer's self-assessment, including expected price trends. It does not provide a systematic and disciplined approach which is updated with electronically supplied updated marketing information. The result is a marketing plan that can not be relied upon by those providing financing. The value of this income approach of the present invention is to assure income and allow for capturing additional income. It is further observed that O'Brien's self-assessment does not provide for any type of numbering scoring system or weighting, or otherwise objective system.

Certainly, O'Brien discloses factors that might affect an individual's marketing plan, but it does not objectively create one.

E. Claims 20, 21, and 22 are nonobvious over U.S. Patent Publication No. 2002/0059091A1 to Hay et al. in view O'Brien ("Grain Marketing Plans for Farmers") and further in view of Friedman ("Dictionary of Business Terms").

The Examiner submits that a the Z-factor equation disclosed in Friedman is identical to the Z-factor disclosed at page 22 of the Specification. That is not correct where the meaning of the variables present in the equation are considered. The z-factor used by Applicant is a different from that disclosed by Friedman because the variables have different meanings. The Applicant has adapted the Z-factor of manufacturing to a traditional agricultural business. The Examiner states that "Since the agricultural production business is risky, the use of a prediction model [sic] such as the Z factor, would have been obvious to a person of ordinary skill in the art." The Applicant disagrees with this unsupported conclusion. Moreover, even if one were to modify the z-factor for agriculture, it would not have any meaning.

The Specification, p. 22, states "When the Z factor is greater than 2.90, a score of 1 is assigned. A score of 1 represents a healthy business. When the Z factor is greater than or equal to 2.5 and less than or equal to 2.9, a score of 2 is assigned. When the Z factor is greater than or equal to 2.0 and less than 2.5, a score of 3 is assigned. When the Z factor is greater than or equal to 1.81 and less than 2.0 a score of 4 is assigned. When the Z factor is

less than 1.81, a score of 5 is assigned. The greater the score, the greater the likelihood of business failure. The greater the Z factor, the lower the score."

Moreover, the Examiner is not substituting a z-factor analysis for some alternative type of analysis taught by Hay or O'Brien. When, Hay, and O'Brien are taken along with Friedman—a dictionary—as a whole the combined teachings of these references provides no convincing line or reasoning that the claimed invention would be obvious to one of ordinary skill in the art.

F. Claims 24-28 are nonobvious over U.S. Patent Publication No. 2002/0059091A1 to Hay et al. in view O'Brien ("Grain Marketing Plans for Farmers") and further in view of U.S. Patent No. 6,990,459 to Schneider.

The Examiner reasons that it is readily apparent that Schneider is concerned with the selling of crops as evidenced by Schneider's evaluation of risk management strategies and the benefits or opportunity costs available through futures options, forward contracting, farm programs, and diversification, citing col. 25, lines 38-41 of Schneider (Examiner's Answer, page 25). Be that as it may, it is clear that Schneider is directed towards a production management system, not a marketing system. Schneider's mention of marketing techniques does not teach a comprehensive system for using the marketing techniques to sell a crop.

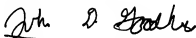
The Examiner fails to take into account the invention as a whole—a systematic income approach to selling a crop which assures income (and thus, the availability of funds to payoff debt obligations) while allowing for capturing additional income. The claimed

invention allows for banks to reduce speculation in loaning to agricultural enterprises, while not adversely affecting the producer by unduly limiting income.

V. **CONCLUSION**

For the above-stated reasons, it is submitted that the claims are in a condition for allowability. The decision of the Examiner, therefore, should be reversed and the case allowed.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "John D. Goodhue", is written over a horizontal line.

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